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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,714	07/07/2003	Steve Sensabaugh	P06626US0	7938
34082	7590	02/10/2005	EXAMINER	
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			ALI, SHUMAYA B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/614,714	SENSABAUGH, STEVE	
	Examiner	Art Unit	
	Shumaya B. Ali	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/7/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stetman et al. US Patent 5,176,623 in view of DiGiulio US Patent 4,088,129.

1. **As to claim 1**, Stetman et al. disclose an ankle fracture brace for immobilization and rehabilitation of the foot and ankle, comprising: a foot support portion (see Fig.1 reference object 12) adapted to receive a foot of a patient; a leg support portion (see Fig.1 reference objects 14 and 28) adapted to receive a leg of the patient, of spaced vertical arms (see Fig.1 reference object 14) connected by arm lower ends sides of the foot support portion so as to extend upwardly past sides of an ankle a patient and terminating adjacent sides of a calf of a the leg support portion including a pair of spaced vertical arms (see Fig.1 reference object 14) connected by arm lower ends (see Fig. 1 reference object 20) to sides of the foot support portion (see Fig.1 reference object 12) so as to extend upwardly past sides of an ankle of a patient and terminating adjacent sides of a calf of a patient (see Fig.1); upper end and lower end straps (see Fig.1 reference object 18) for securing the leg support portion to the leg of the patient, being connectable to the vertical arms adjacent the calf and ankle, respectively.

2. **As to claim 4**, Stetman et al. disclose the foot support portion (see Fig.1 reference object 12) has a main boot body (see Fig.1) with an upper opening (see Fig.1 toward reference object 10) therein for receiving the foot, a pair of strap holders (see Fig.1 reference object 32) are connected to the main boot body on opposite sides of the upper opening, and a foot strap (see Fig.1 reference

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object 18) adapted to secure the foot within the main boot body is removably secured between these strap holders.

3. **As to claim 5**, Stetman et al. disclose lower ends of the arms have an ankle bend (incline) (see Fig. 5 reference object 28) therein providing a greater distance between the vertical arms near the ankle of a patient, as compared to the distance between the vertical arms near the leg of a patient (see col.4 lines 39-49).

4. **As to claim 6**, Stetman et al. disclose pairs of hook patches formed of male micro hook fabric (Velcro) (see col.3 lines 63-67), one pair of hook patches connects the upper end strap (see Fig.1 reference object 18 near calf) to the vertical arms adjacent calf and another pair of hook patches connects the lower end strap (see Fig.1 reference object 18 near ankle) to the vertical arms adjacent the ankle.

5. **As to claim 1**, Stetman et al. however, do not disclose a horizontal break line in each of the arms between the upper end and lower end straps.

6. **As to claim 1**, DiGiulio teaches an abduction brace comprising an elongated bar with transverse scoring lines (see Fig.1 reference object 8) that can be broken manually by the application of a bending movement to provide shorter bar having one of a number of predetermined discrete lengths. DiGiulio additionally teaches, by providing a scored bar, the need for keeping a large number of bars of different lengths on hand is eliminated (see col. 2 lines 1-12 and col.4 lines 25-33).

7. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the supporting arms of Stetman et al. in view of DiGiulio to provide a horizontal break line (scoring lines) in each of the arms between the upper end and lower end straps which

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can be broken off easily for the purposes of accommodating different patient uses of the ankle brace.

8. **As to claim 2**, Stetman et al. do not disclose laterally spaced horizontal break lines are located in each of the arms on both inner and outer surfaces thereof.

9. **As to claim 2**, DiGiulio teaches scoring lines (break lines) are achieved by the formation of V-shaped notches (see Fig.1 reference objects 10 and 12), the notches being opposed in pairs of opposite sides of a bar (vertical arm) (see col.4 lines 28-31).

10. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the verticals arms of Stetman et al in view of DiGiulio to provide laterally spaced horizontal break lines that are located in each of the arms on both inner and outer surfaces thereof which can be broken off easily for the purposes of accommodating different patient uses of the ankle brace.

11. **As to claim 3**, Stetman et al. do not disclose the break lines on each arm dwell in the same horizontal place.

12. **As to claim 3**, DiGiulio teaches the break lines (scoring lines) on the scoring bar. If two identical scoring bars of DiGiulio are set to stand side by side on a horizontal plane, then the scoring lines of the bars will obviously be on the same horizontal place.

13. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the supporting arms of Stetman et al. in view of DiGiulio to provide break lines on each arm that dwell in the same horizontal place for the purposes of retaining equal height of the two arms after adjusting to the lower height.

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Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over the ankle fracture brace of Stetman et al. US Patent 5,176,623 as modified by DiGiulio US Patent 4,088,129 as applied to claims 1-5 above, and further in view of Kowalczyk et al. US Patent 6,406,450 B1

14. As to claim 6, Stetman et al. do not disclose the pairs of hook patches are on the vertical arms.

15. As to claim 6, Kowalczyk et al. teach the vertical arms (medial and lateral side portion) (see Fig.1 reference objects 14 and 16) include pairs of hook patches (see Fig.1 reference objects 38 and 48).

16. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the vertical arms of Stetman et al. in view of Kowalczyk et al. to provide the vertical arms with hook patches adjacent to the calf and ankle for the purpose of connecting the upper strap near the calf and lower strap near the ankle to the vertical arms.

Conclusion

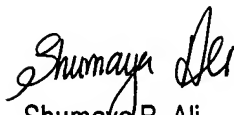
17. The prior art of record and not relied upon is considered pertinent to applicant's disclosure: US 3064644 A, US 4771768 A, US 4962760 A, US 4974583 A, US 5176623 A, US 5329705 A, US 5464385 A, US 5605535 A, US 5620411 A, US 6648843 B1, US 6767332 B1, US 2486687 A, US 20020077576 A1, US 20030196352 A1, GB 2389795 A, and US 20040019307 A1. These prior arts of record disclose ankle fracture brace with supporting arms.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30 am-4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-6088.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shumaya B. Ali 11/22/04
Examiner
Art Unit 3743


Henry Bennett
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